

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

FILED  
RICHARD W. NAGEL  
CLERK OF COURT  
SEP 21 PM 3:14  
U.S. DISTRICT COURT  
SOUTHERN DIST OHIO  
WEST DIV CINCINNATI

MARCUS FONTAIN,

Plaintiff,

v.

HARJINDER S. SANDHU, et al.

Defendants.

Case No. 1:22-cv-124

JUDGE DOUGLAS R. COLE

PLAINTIFF'S TRAVERSE AND  
MOTION FOR EQUITABLE RELIEF  
ON RENEWED REQUEST FOR FEES  
BY BRIAN O'CONNELL, DOC # 22

Plaintiff, Marcus Fontain, *pro se*, hereby files his, Traverse and Motion for Equitable Relief on Brian O'Connell's Renewed Motion for Fees Doc # 22.<sup>1</sup>

In this Motion for Equitable Relief, the Plaintiff by no means is attempting to justify his lack of prudence in having misquoted the federal removal statute. The Plaintiff has already accepted full responsibility for his misinterpretation of the law.

The Plaintiff under the Equitable Relief asks for this Court to not impose any legal fees upon the Plaintiff, for the following reasons:

**A. Brian O'Connell is not Entitled to any Fees**

1. O'CONNELL in a clear display of arrogance, in his recent filing Doc #22, claims

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<sup>1</sup> This case is related to the RICO Action Marcus Fontain v. Terry Nestor, et al., U.S. District Court for the So. Dist. of Ohio – Case No. 1:22-cv-00431; Civil Rights Action - Marcus Fontain v. April M. Lane, et al., U.S. District Court for the So. Dist. of Ohio – Case No. 1:19-cv-00304; and Civil Rights Action Marcus Fontain v. Brian J. O'Connell, Jeffery S. Lane, Zachary Prendergast, et al., U.S. District Court for the So. Dist. of Ohio – Case No. 1:22-cv-00105.



that his fraudulent Motion for \$30,800 in Sanctions filed on November 13, 2019, against the Plaintiff, in the dismissed H&R Cincy v. Fontaine, Case A-1705644, is irrelevant "*...The fact that the Sandhu Defendants may have sought an award of attorney fees before Judge Nester (Plaintiff's Opposition to Affidavit, 9/8/22 at 2-6 (Doc. 21)), in the year 2019, has no bearing on either their entitlement to fees here or the reasonableness of the amount sought here...*" O'CONNELL is wrong on all counts, lying to a Judge, any Judge for any reason is not permissible, especially by a lawyer who is supposed to be an officer of the court, more specifically submitting a False Affidavit to any Court is an act of lying under oath. See **Exhibit 7**.

2. More specifically the Affidavit O'CONNELL submitted to this Court asking for legal fees, in his initial Motion, is perjurious because O'CONNELL, lied when he failed to tell this Court that long ago he was fired by the "Sandhu Defendants" but for his own personal gain has continued to use their names in all his filings as – "*the Sandhu Defendants...*"

3. On November 13, 2019, when O'Connell filed such patently fraudulent Motion the Plaintiff did not have any case pending in the Hamilton County Court of Common Pleas, having been dismissed from the equally dismissed H&R Cincy v. Fontaine, Case A-1705644, by O'CONNELL himself more than one year before on September 26, 2018, in an Agreed Entry of Dismissal executed by O'CONNELL himself and pursuant to the August 21, 2018, Settlement Agreement, negotiated by O'CONNELL himself were the Plaintiff's Insurance Company, paid O'CONNELL \$35,000 to settle the case. See **Exhibit 1, 2**.

4. On November 13, 2019, O'CONNELL went in so far as to attaching his own affidavit, to add validity to his false claims, attempting to perpetrate the perfect white-collar crime, under the color of state law. O'CONNELL did not see anything wrong with submitting to a Judge a false Affidavit, then or now. See **Exhibit 7**.



**B. The Relevant Conduct by O'CONNELL**

5. Since January 11, 2019, O'CONNELL, and his cohorts, have cost the Plaintiff and his family more than \$100,000 in legal fees, financial losses of more than \$250,000, and property damages more than \$1,000,000 and because of his anonymous postings on the internet falsely accusing the Plaintiff of being a "Convicted Felon" the Plaintiff so far has lost a \$6,000,000 condominium conversion project and \$200,000 in out-of-pocket costs related to that project.

6. The Plaintiff's good family including, his wife, his older sons who are licensed attorneys and a minor child have had their names dragged through the mud by O'CONNELL, who does not seem to understand there are legal consequences for his heinous acts.

7. To put it in context, the Plaintiff graduated from Law School in 1988. From 1988 to October 31, 2017, the Plaintiff was never sued by anyone and never sued anyone. It was not until O'CONNELL, and his cohorts decided to try to steal millions of dollars' worth of real estate, owned by the Plaintiff and his family, in collusion with a sitting state Judge -Terry Nestor, under the color of state law that the Plaintiff was forced to seek redress through the courts – a tough nut to crack when the Judge Himself is corrupt and possibly taking bribes and where his reelection is hinging on his co-conspirators.

8. On January 11, 2019, after the dismissal of the H&R Cincy v. Fontaine, Case A-1705644 and all the Defendants, O'CONNELL, falsely alleging to be representing some Plaintiff's approached the newly elected state Judge Terry Nestor, and asked Judge Nestor to reopen the dismissed H&R Cincy v. Fontaine, Case A-1705644 and to reinstate all the Defendants, falsely claiming that Plaintiff was a "Convicted Felon" which Judge Nestor did. See O'CONNELL'S Motion **Exhibit 3**.

9. On January 11, 2019, O'CONNELL, and the ostensible Receiver Jeffrey S.



Lane, and his lawyer Zachary Prendergast, began a fraudulent Receivership Action in the dismissed H&R Cincy v. Fontaine, Case A-1705644, against the Plaintiff and all the dismissed defendants, in collusion with state Judge Nestor, under the color of state law. See Hamilton County Court of Common Pleas H&R Cincy et al, v. Marcus Fontaine, et al, Case A-1705644, and resulting appeal H&R Cincy et al, v. Marcus Fontaine, et al/ CA No. C-190574.

10. For the next seven months, O'CONNELL and his co-conspirators, force the Plaintiff and his family to defend against a fraudulent Receivership Action in a case that did not exist. See Court docket H&R Cincy v. Fontaine, Case A-1705644.

11. Seven months later, on September 12, 2019, Judge Terry Nestor, without Personal Jurisdiction nor Subject Matter Jurisdiction and acting under the color of state law, in the fabricated Receivership Action, under the direction and control of O'CONNELL, and Zachary Prendergast, rubber-stamped a fraudulent Judgment Order for \$79,178.64, styled as a **"Final Entry Terminating Receivership, Enforcing the Settlement Agreement and Assessing Costs"** in the dismissed H&R Cincy v. Fontaine, Case No. A-1705644, and against all the dismissed defendants - Marcus Fontain, Norma Fontain, Dina Towers Association, Cinvesco, LLC; and Cinvexco, LLC.<sup>2</sup> See **Exhibit 4**.

12. Judge Nestor's Judgment Order of September 12, 2019 was procured by O'CONNELL, and Zachary Prendergast, through fraud, it was the product of fraud, and entered in a case that no longer existed - the H&R Cincy v. Fontaine, Case No. A-1705644 - and where all the Defendants - Marcus Fontain, Norma Fontain, Dina Towers Association, Cinvesco, LLC; and Cinvexco, LLC., had been dismissed *with prejudice*, one

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<sup>2</sup> Judge Terry Nestor on September 12, 2019, willfully and with intent to defraud, rubber-stamped the fraudulent Judgment Order fabricated by Defendants O'Connell and Prendergast, in Violation of Civil Rights 42 USC § 1983; 42 USC § 1985; 18 U.S.C. § 1503; 18 U.S.C. § 242 15 USC § 1692e(2)(A); 18 U.S.C. § 1962(c),(d). O'Connell and Prendergast violated the Ohio Rules of Professional Conduct - Rules 3.01; 3.03(a)(3); 3.03(a)[5]; 8.3 and 8.04 (a-f) and Judge Nestor violated Ohio Code of Judicial Conduct Rule 2.15(A), (B) and **Canon 1** and Rules 1.1; 1.2; and 1.3.



year prior on September 26, 2018. See Court Docket H&R Cincy v. Fontaine, Case No. A-1705644. See Judgment Order **Exhibit 4**.

13. From January 11, 2019 through September 12, 2019, O'CONNELL, and Zachary Prendergast, engaged in a racketeering scheme which included – Breach of Contract, Illegal Orders, Fraudulent Restraining Orders; Perjury, Embezzlement; Extortion; Coercion; Threats; Intimidation; Obstruction of Justice; Falsifying Evidence, Forgery, Filing of multiple False Certificates of Lien; Paper Terrorism; Solicitation; Suppression of Evidence; Spoliation of Documents; Theft of Property; Illegal Kickbacks; Deceiving Law Enforcement, Abuse of Process; Malicious Prosecution, Violations of the Ohio Rules of Professional Conduct and the Code of Judicial Conduct, illegal solicitations, and Misconduct. See Marcus Fontain v. April L. Lane, et al., U.S. Dist. Ct. So. Dist. of Ohio Case No. 1:19-cv-00304. See also **Breach of Contract lawsuit** Hamilton County Court of Common Pleas – Marcus Fontain, Harjinder Sandhu, et al., Case No. A-1901296 and resulting appeal, Court of Appeals First Appellate District of Ohio – Marcus Fontain v. Harjinder Sandhu, et al., CA C-200011. See also **Slander of Title lawsuit** Warren County Court of Common Pleas – Marcus Fontain v. Harjinder Sandhu, et al., Case No. 20-CV-093638 and resulting appeal Twelve District Court of Appeals Marcus Fontain v. Harjinder Sandhu, et al., CA No. 2021-02-015.

14. Two years later, on February 26, 2021, the Court of Appeals First Appellate District of Ohio in H&R Cincy et al v. Fontaine, et al., CA No. C-190574 on direct appeal from the fraudulent Receivership Action perpetrated in the dismissed H&R Cincy v. Fontaine, Case No. A-1705644, ruled that after Judge Steven Martin, filed the Agreed Entry of Dismissal on September 26, 2018, under Ohio Civ. R. 41(A)(2) - (a) Defendant Terry Nestor did not have "Personal Jurisdiction" over the Dismissed Defendants; and (b) the trial court did not have Subject Matter Jurisdiction over the



dismissed H&R Cincy v. Fontaine, Case No. A-1705644. See **Exhibit 5**.

**C. Plaintiff's First Civil Rights Action**

15. On April 26, 2019, attempting to stop the corruption by O'CONNELL, and his cohorts, the Plaintiff filed Marcus Fontain v. April L. Lane, et al., U.S. Dist. Ct. So. Dist. of Ohio Case No. 1:19-cv-00304. The Court placed a stay on the case.

16. O'CONNELL, Zachary Prendergast and Judge Terry Nestor, were not deterred by the filing of the Civil Rights Action from continuing with their racketeering schemes and indeed interpreted it as the green light to continue to perpetrate fraud against the Plaintiff and his family under the color of state law.

17. On September 25, 2019, O'CONNELL, and Zachary Prendergast fabricated and filed multiple forged and False Certificate of Judgment for Liens against the Plaintiff and his family, in Warren County; and then in Hamilton County on October 07, 2019 in favor of O'Connell's client "**H&R Cincy Properties, LLC**" without any supporting judgments. See **Slander of Title lawsuit**, Warren County Court of Common Pleas – Marcus Fontain v. Harjinder Sandhu, et al. Case No. 20-CV-093638 and resulting appeal Twelve District Court of Appeals Marcus Fontain v. Harjinder Sandhu, et al. CA No. 2021-02-015. The filing fees for the False Certificates were paid by Prendergast, using checks from his Law Firm, Robbins, Kelly Patterson, and Tucker. See False Certificates **Exhibit 6**.

18. In the **Breach of Contact lawsuit** before Judge Ethna Marie Cooper, which brought us to this Court - in Hamilton County Court of Common Pleas – Marcus Fontain, Harjinder Sandhu, et al. Case No. A-1901296 and resulting appeal, Court of Appeals First Appellate District of Ohio – Marcus Fontain v. Harjinder Sandhu, et al. CA C-200011, O'Connell and Prendergast fabricated both of Judge Cooper's December 13, 2020, dismissal orders, which state Judge Cooper had no trouble rubber stamping.



**D. O'CONNELL'S False Representations to Magistrates Karen Litkovitz and Stephanie Bowman**

19. Soon after April 26, 2019, the Plaintiff filed his first, Civil Rights Action - Marcus Fontain v. April M. Lane, et al., U.S. District Court for the So. Dist. of Ohio Case No. 1:19-cv-00304, O'CONNELL began willfully misrepresenting to Chief Magistrate Judge Keren Litkovitz about a state Receivership Action, he was conducting against the Plaintiff, with Judge Terry Nestor, with an ostensible Receiver – Jeffrey S. Lane in the dismissed H&R Cincy v. Fontaine, Case No. A-1705644, and began filing Motions and multiple Status Reports containing, multiple fraudulent allegations - blatantly lying to a federal judge – exactly as O'CONNELL, does to the state judges – and engaged in obstruction of justice, and fraud upon the court.<sup>3</sup>

20. O'CONNELL, regardless of the consequences, has repeatedly made the same false and misleading representations to Magistrate Judge Stephanie Bowman in Marcus Fontain v. Brian J. O'Connell, et al., U.S. District Court for the So. Dist. of Ohio – Case No. 1:22-cv-00105 as he is desperately trying to have Judge Bowman declare the Plaintiff a Vexatious Litigator, something O'CONNELL, has already tried dozens of times in the state courts.

21. Even Judge Terry Nestor, colluding with O'CONNELL filed his own Motion in the Ohio Supreme Court seeking to have the Plaintiff declared a Vexatious Litigator. See Original Action in Prohibition Ohio Supreme Court, Marcus Fontain v. Terry Nestor, Case No. 2019-0597 – which was DENIED.

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<sup>3</sup> See May 02, 2022, Plaintiff's Motion for Sanctions against O'Connell, and Prendergast. See also August 29, 2022, Motion for Disciplinary Referral, Criminal Referrals and for Sanctions against O'Connell, and Prendergast. Marcus Fontain v. April M. Lane, et al., U.S. District Court for the So. Dist. of Ohio – Case No. 1:19-cv-00304. See also June 20, 2011, Motion for Sanctions against O'Connell, and Prendergast, Hamilton County Court of Common Pleas – Marcus Fontain v. Brian J. O'Connell, et al., Case No. A-2101834



22. O'CONNELL'S racketeering scheme, began in or about January 11, 2019, when O'CONNELL post dismissal on September 26, 2018, of the H&R Cincy v. Fontaine, Case No. A-1705644, and all the defendants - Marcus Fontain, Norma Fontain, Dina Towers Association, Cinvesco, LLC, and Cinvexco, LLC, filed a Motion before the newly elected state Judge, Terry Nestor asking to "Amend" Judge Steven E. Martin's Receiver Order of August 10, 2018 and to "extend" the Receivership past its end date of February 11, 2019.<sup>4</sup>

**E. The Reversal and Debunking of the of the Receivership Action**

23. Two years after O'CONNELL began the sham Receivership Action, on February 26, 2021, the Court of Appeals First Appellate District of Ohio in H&R Cincy Properties, LLC, et al v. Marcus Arthur Fontaine, et al., CA No. C-190574 on direct appeal from the fraudulent Receivership Action, perpetrated in the dismissed H&R Cincy v. Fontaine, Case No. A-1705644, ruled that after Judge Steven Martin, filed the Agreed Entry of Dismissal on September 26, 2018, under Ohio Civ. R. 41(A)(2) - (a) judge Terry Nestor did not have "Personal Jurisdiction" over the Dismissed Defendants; and (b) the trial court did not have Subject Matter Jurisdiction over the dismissed H&R Cincy v. Fontaine, Case No. A-1705644.

24. From January 11, 2019 through February 21, 2021, O'CONNELL and his coconspirators forced the Plaintiff and his family to defend against the fraudulent Receivership Action they perpetrated in a case that did not exist – the H&R Cincy v. Fontaine, Case No. A-1705644 - which had been dismissed, with prejudice since September 26, 2018, making the Plaintiff and his family spend more than \$100,000 in legal fees and court costs, causing property losses of more than \$250,000 and other damages of more than \$1,000,000, and forcing the Plaintiff and his family to

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<sup>4</sup> See Docket 01/11/2019 - H&R Cincy v. Fontaine, Case No. A-1705644.



expend hundreds of hours in unwarranted litigation.<sup>5</sup>

25. In total O'CONNELL, and his cohorts have caused more than \$10,000,000 in damages to the Plaintiff and his family and counting, in the process O'CONNELL violated the Ohio Rules of Professional Conduct and Judge Terry Nestor the Rules of Judicial Conduct. See **Exhibit 8**

### CONCLUSION

WHEREFORE, the Plaintiff prays under Equitable Relief for this Court to not impose any legal fees upon the Plaintiff.

Submitted with Respect, September 21, 2022

A handwritten signature in black ink, appearing to read 'Marcus Fontain', with a long horizontal stroke extending to the right.

Marcus Fontain, pro se

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Tel: 424-204-2225

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<sup>5</sup> See Docket record Hamilton County Court of Common Pleas H&R Cincy v. Fontaine, Case No. A-1705644. See also Court of Appeals First Appellate District - H&R Cincy Properties, LLC, et al v. Marcus Arthur Fontaine, et al., CA No. C-190574 – on appeal from H&R Cincy v. Fontaine, Case No. A-1705644.



**CERTIFICATE OF SERVICE**

**U.S. District Court  
Southern District of Ohio  
CIVIL DOCKET FOR CASE 1:22-cv-00124**

I MARCUS FONTAIN, certify that a true and accurate copy of the foregoing was filed via the Court's electronic filing system on this day. Notice of filing will be performed by the Court's electronic filing system, and parties may access the document through the Court's electronic filing system. Plaintiff will also be served via electronic mail.

September 08, 2022

A handwritten signature in black ink, appearing to read 'Marcus Fontain', is written over the printed name 'Marcus Fontain, pro se'.

Marcus Fontain, pro se  
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[Marcus@mfontain.com](mailto:Marcus@mfontain.com)